

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARLON PALMER,

Plaintiff,

v.

MARGARET MIMMS,

Defendant.

Case No.: 1:22-cv-01611-CDB (PC)

**ORDER ON PLAINTIFF'S MOTION TO
WITHDRAW CLAIM**

(Doc. 8)

Plaintiff Marlon Palmer is proceeding *pro se* in this civil rights action.

I. RELEVANT PROCEDURAL BACKGROUND

Plaintiff initiated this action with the filing of his complaint on December 15, 2022. (Doc.

1.) That same date, Plaintiff filed a document titled “Motion to Order Fresno County Sheriff’s Office to Grant Access to Law Library; 28 U.S.C. § 1331.” (Doc. 2.)

On December 19, 2022, the undersigned issued Findings and Recommendations, recommending that Plaintiff’s motion for an order directing the Fresno County Sheriff’s Office to grant him access to the law library be denied. (Doc. 5.) Plaintiff was afforded 14 days to file any objections. (*Id.* at 6.)

On January 3, 2023, Plaintiff filed a document titled “Motion to Withdraw Bivens Claim Against Fresno County for Denying Access to Courts.” (Doc. 8.)

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II. DISCUSSION

In his motion, Plaintiff states he wishes to “withdraw the motion filed in this Court pursuant to 42 U.S.C. 1983, without prejudices.” (Doc. 8 at 2.) Plaintiff states “that an unexpected event occurred which would greatly prevent the movant from adequately litigating the claim and the movant needs to further investigate the issue.” (*Id.*) Plaintiff requested “this Court to withdraw the 1983 motion without prejudice.” (*Id.*)

The Court is unclear whether Plaintiff is seeking to withdraw his December 15, 2022 motion for an order directing the Fresno County Sheriff's Office to allow him access to the law library, or whether Plaintiff is seeking to dismiss this action without prejudice. Plaintiff will be afforded the opportunity to clarify his position and request. Plaintiff uses the words "motion" and "claim," but those words mean different things. In other words, withdrawing a motion is different than withdrawing a claim for the Court's consideration. Without knowing Plaintiff's true intention, the Court is hesitant to take any action on the instant motion.

III. CONCLUSION AND ORDER

For the reasons given above, Plaintiff SHALL advise the Court whether: (1) he intends to withdraw the motion he filed on December 15, 2022, seeking an order from this Court directing the Fresno County Sheriff's Office to allow him access to the law library;¹ or (2) he intends to voluntarily dismiss this action.

If Plaintiff wishes to withdraw his motion, he may do so, but he must make that clear.

If Plaintiff wishes to dismiss this action without prejudice, Plaintiff is advised he should

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¹ Objections to the Findings and Recommendations issued December 19, 2022, were due within 14 days of the date of service. Because it is not clear what Plaintiff intended by his filing of January 3, 2023, the Court will refrain from submitting the findings for consideration by the assigned district judge until Plaintiff responds to the instant order.

1 file a Notice of Voluntary Dismissal. *See* Fed. R. Civ. P. 41(a)(1)(A)(i).

2 Therefore, **IT IS HEREBY ORDERED** that Plaintiff advise the Court as directed above
3 **within 14 days of the date of service of this Order.**

4 IT IS SO ORDERED.

5 Dated: January 4, 2023


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UNITED STATES MAGISTRATE JUDGE